

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M- No.50569 of 2022
Date of Decision:- 29.11.2022**

Dagdish Singh

....Petitioner

Vs.

Rajinder Pal Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Bahaar Ghuman, Advocate
for the petitioner.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of the order dated 24.08.2022 (Annexure P-2) passed by Ld. JMIC, Patiala, in complaint case COMA No.2592 of 2020 dated 22.10.2020, Rajinder Pal Singh Vs. Dagdish Singh, to the extent whereby the said Court directed the petitioner to deposit 20% of cheque amount towards interim compensation to the complainant, as per the provisions of Section 143(A) of Negotiable Instruments Act.

The brief facts of the case are that respondent Rajinder Pal Singh has filed aforesaid complaint against the present petitioner under Section 138/142 of Negotiable Instruments Act. On the completion of preliminary evidence, the petitioner was summoned

and he appeared before the Trial Court and was granted bail. The Trial Court on 24.08.2022 passed the following order:-

*“Present: Surinder Gera, Advocate for complainant.
Accused on bail with Sh. Kamna
Kumar, Jain, Advocate.*

Today case was fixed for serving notice of accusation upon accused. Before proceeding further, I have explain to both the parties regarding mediation and other alternative mode of resolution. It has been also explained that if accused makes the payment of the cheque amount then alongwith costs, as assessed, if any, matter it hand can be compoundable. But accused is adamant to pursue the matter on merits.

Heard. Finding prima facie case, notice U/s 138 of NI Act has been served upon the accused to which he pleaded not guilty and he wants to defend the case of the complainant and he desires to cross examine the complainant's witness. Since fairly point is involved, therefore, leave to defend is granted to the accused. Accused has received copies of complaint and other documents.

After considering the defence of the plea taken by the accused, averments made in the complaint and the cheque amount involved in the present complaint, I am of the considered view that the present case should be treated as summons case. Therefore, let procedure prescribed for the summon trial be adopted.

Further, as per amendment of law with regard to NI Act, in case wherein accused pleads not guilty and claim trial, interim compensation is to awarded. For that, the latest

position of law is to be seen, which provides that, as reproduced alongwith relevant provisions;

" The NI (Amendment) Act, 2018 No. 20/2018 which came into force on 02.08.2018 provides that in the NI Act, 1881, (herein referred to as principal act), after Section 143 the following Section shall be inserted:-

143A (1) notwithstanding anything contained in the Code Criminal Procedure 1973, the Court trying An offence under Section 138 order the drawer of the cheque to pay the interim compensation to the complainant.

143 A (1) (a) reads as under:-

" In a summary trial or in summon case, where he pleads not guilty to the accusation made in the complaint and in any other case, upon framing of charge."

The afore mentioned amendment clearly provides for provisions of interim compensation, which is to be imposed upon accused, who pleaded not guilty to accusation made in the complaint and it is be noted that it must not exceed 20% of the cheque amount and shall be paid within 60 days from the date of order or within such period not exceeding 30 days alongwith other conditions as mentioned above. Further, the Hon'ble Supreme Court in case titled as G.J Raja Vs. Tejraj Surana 2019 (3) CCC 613 SC has held that provisions of 143A of NI Act came into force on 01.09.2018 and have prospective effect and interim compensation can be order to be paid if the offence was committed after the introduction of the said provision. So, in the present case the amount of interim compensation to the tune of 20% of cheque amount to be paid on or before 19.09.2022 and for cws.

Date of Order: 24.08.2022

Sd/

JMIC, Patiala”

The petitioner has not challenged the aforesaid order to the extent whereby notice of accusation was served upon him. However, he being aggrieved of the order passed by the trial Court under Section 143(A) of Negotiable Instruments Act, the petitioner has filed the present petition.

The counsel for the petitioner contended that the impugned order whereby the petitioner has been directed to pay interim compensation to the complainant as per the provisions of Section 143(A) of Negotiable Instruments Act, is totally illegal, being passed in mechanical manner without application of mind. The counsel further contended that recently the High Court of Judicature at Bombay (Nagpur Bench) in Criminal Writ Petition No.48 of 2022, *Mr. Ashwin, Ashokrao Karokar Vs. Mr. Laxmi Kant Govind Joshi, decided on 7.7.2022*, held that the provision of Section 143(A) Negotiable Instrument Act, are directory and not mandatory in nature.

The counsel for the petitioner further contended that the trial Court passed the impugned direction, under the impression that the aforesaid provision is mandatory in nature. The counsel further contended that the impugned order to the extent stated above is liable to be set aside.

I have considered the submissions made by counsel for the petitioner.

This Court is of the view that the present petition can be disposed of without issuing any notice to the opposite party, for the reasons stated herein below.

The Hon'ble Delhi High Court in *CRL.MC 2663 of 2021 M/s Jsbs Cargo and Freight Forwarder Pvt. Ltd Vs. State and another, decided on 20.12.2021*, held that provision of Section 143(A) Negotiable Instruments Act, essentially is directory and cannot be termed as mandatory in nature. Even the Nagpur Bench of Bombay High Court also held in *Ashwin Ashokrao Karokar's case (supra)* that Section 143(A) of Negotiable Instruments Act, is discretionary and not mandatory.

In the instant case, it appears that no application was moved by the respondent under Section 143(A) of Negotiable Instruments Act and no opportunity of hearing was given to the petitioner before passing the impugned order, whereby the direction was given to the petitioner to pay the interim compensation under Section 143(A) of Negotiable Instruments Act.

After going through the impugned order, it appears that the Trial Court granted interim compensation under Section 143(A) of Negotiable Instruments Act, in a casual manner, without application of mind, as to how the said compensation was calculated and awarded.

The Trial Court misconstrued the said provision as mandatory in nature, whereas the legal position is just contrary as has been discussed above.

In light of the above, the impugned order whereby interim compensation has been ordered to be paid by the petitioner under Section 143(A) of Negotiable Instruments Act, is liable to be set aside being non-speaking and contrary to settled position of law as detailed above.

Consequently, the present petition is hereby allowed and the impugned order dated 24.08.2022, Annexure P-2, to the extent stated above, is hereby set aside and the matter is remanded back to learned Trial Court to dispose of the issue regarding grant of interim compensation to the complainant/respondent under Section 143A, in accordance with law within one month of the receipt of certified copy of this order.

The petitioner is directed to appear before the Trial Court on the date already fixed in the trial.

29.11.2022

P. Chawla

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No